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SEP 21 1932

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932

No. 388

LETCHER SPICER, BY SAM SPICER, GUARDIAN AND COMMITTEE, PETITIONER,

vs.

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

WILLIAM MARSHALL BULLITT,
Counsel for Petitioner.

LEO T. WOLFORD,
O. H. POLLARD,
Of Counsel.

INDEX.

SUBJECT INDEX.

Petition for writ of certiorari:	Page
Reasons relied on for allowance of writ	2
Short statement of the matter involved	3
Prayer for writ	4
Affidavit of petitioner	5

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J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Letcher Spicer, by Sam Spicer, Guardian and Committee, petitions for a writ of certiorari to review the decision of the Court of Appeal of the State of Kentucky rendered on May 10, 1932 (petition for rehearing overruled June 21, 1932), in

J. Bryan Smith, Special Deputy Banking Commissioner, etc., appellant, *vs.* Letcher Spicer's Guardian and Committee, appellee (reported in 244 Ky. 68; 501 S. W. (2nd) 64).

Reasons Relied on for Allowance of Writ.

The Court of Appeals of Kentucky, construing the World War Veterans Act of June 7, 1924 (43 U. S. Stat., Sec. 300, page 624), and as amended by Act of March 4, 1925 (43 Stats. 1308; 38 U. S. C. A., Sec. 511), and Section 22, 43 Stat. 613 (U. S. C. A., Sec. 454), and subsequent amendments, held that the moneys paid to the guardian of an incompetent under the provisions of these acts, and on deposit in a bank to the credit of the guardian on a time deposit did not have priority over general creditors of such bank upon its insolvency and liquidation by the State Banking Department (R. 12-17). In construing these Federal statutes, the highest court of the State of Kentucky has,

(*a*) Decided this Federal question of substance which has not heretofore been determined by this Court, and has decided it in a way not in accord with the applicable decisions of this Court;

(*b*) Rendered a decision in direct conflict with the decisions of the highest courts of Missouri, Iowa, Nebraska, and Virginia;

(*c*) Decided this question of Federal law which has not been, but should be, settled by this Court;

(*d*) Decided adversely to the petitioner where a right and title are specially set up and claimed by him under the statutes of the United States.

Short Statement of the Matter Involved.

Under the provisions of the World War Veterans' Act, the United States Government paid to the guardian for the incompetent World War Veteran, the petitioner herein, in monthly installments due said incompetent veteran by way of World War Risk Insurance, and in part by way of Adjusted Compensation, aggregating total sum of $6,070.80. This money was deposited by the guardian on a time deposit in the Hargis Bank and Trust Company, which subsequently became insolvent and was taken over by the State Banking Department for Liquidation (R. 1-2).

The incompetent veteran, by his guardian, brought this suit in the Circuit Court of Breathitt County, Kentucky, against the respondent as Special Banking Commissioner and Liquidating Agent of the insolvent bank, to have said funds adjudged preferred and prior to the claims of general creditors (R. 1-3).

The respondent (defendant below) filed a demurrer to the petition which was overruled by the court (R. 5). The respondent then filed an answer (R. 5) and an amended answer (R. 8). The court sustained a demurrer to the answer as amended and rendered a judgment decreeing a priority in favor of the petitioner for the amount claimed and adjudging him a lien on the assets of the insolvent bank in the hands of the respondent as liquidating agent (R. 10). From the judgment the respondent prosecuted an appeal to the Court of Appeals of Kentucky. In the opinion delivered on the 10th day of May, 1932, the Court of Appeals of Kentucky reversed the decision of the

Breathitt Circuit Court and held that there was no priority in favor of the petitioner, and that the lower court erred in overruling the demurrer to the petition, and remanded the case to the Breathitt Circuit Court for proceedings in conformity with said opinion (R. 12).

On the 7th day of June, 1932, and within 30 days from the date of said opinion, this petitioner filed a petition for rehearing in the Court of Appeals of Kentucky (R. 17). Said petition for rehearing was overruled by said court on the 21st day of June, 1932 (R. 18).

A certified copy of the transcript of the record of the proceedings in all of said courts in this case, including the Court of Appeals of the State of Kentucky is submitted herewith, and

A SUPPORTING BRIEF is submitted herewith.

Your petitioner is advised and believes that the judgment of the Court of Appeals of Kentucky in this case is erroneous in manner and form as herewith set forth as appears from said transcript of the record and proceedings.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of this Court directed to the Court of Appeals of the State of Kentucky, to the end that the judgment of said court may be reviewed, considered and determined as provided by law and this Honorable Court may correct the errors complained of herein and reverse said judgment, remand said cause and grant such other relief as from

the nature of the case your petitioner may be entitled in pursuance to law.

LETCHER SPICER,
Petitioner,
By SAM SPICER,
Petitioner.

LEO T. WOLFORD,
O. H. POLLARD,
Of Counsel.

STATE OF KENTUCKY,
County of Breathitt, ss:

Sam Spicer, being duly sworn, says that he is guardian of the petitioner, Letcher Spicer, mentally incompetent, and that the foregoing petition is true to his own knowledge; he says that the reason this verification is not made by the plaintiff, Letcher Spicer, is that the said Letcher Spicer is mentally incompetent and that this affiant is his statutory guardian.

SAM SPICER.

Subscribed and sworn to before me by Sam Spicer this the 11th day of August, 1932.

[SEAL.] J. L. STIDHAM,
Notary Public Breathitt County, Kentucky.

Notary Public Breathitt County, Ky.
My commission expires Feb. 13, 1933.

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SEP 21 1932
CHARLES ELMORE CROP
CLERK

No. 388

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

LETCHER SPICER BY SAM SPICER, Guardian and Committee, - - - - - - - - - Petitioner,

versus

J. BRYAN SMITH, Special Deputy Banking Commissioner and Liquidating Agent of Hargis Bank and Trust Company, - - - - - - - - Respondent.

SUPPORTING BRIEF OF PETITIONER FILED WITH PETITION FOR WRIT OF CERTIORARI.

O. H. POLLARD,
WM. MARSHALL BULLITT,
LEO T. WOLFORD,
Counsel for Petitioner.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

LETCHER SPICER BY SAM SPICER, GUARDIAN AND COMMITTEE, - - - - - - *Petitioner,*

v.

J. BRYAN SMITH, SPECIAL DEPUTY BANKING COMMISSIONER AND LIQUIDATING AGENT OF HARGIS BANK AND TRUST COMPANY, - - - - - - - - *Respondent.*

SUPPORTING BRIEF OF PETITIONER FILED WITH PETITION FOR WRIT OF CERTIORARI.

In support of the petition for writ of *certiorari*, we respectfully submit the following brief and statement of the laws and statutes of the United States sustaining our contention.

STATUTES RELIED ON.

(a) Revised Statutes of the United States, Section 3466, provides:

> "Sec. 3466. **Priority of Debts Due United States Established.**

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

(b) Act of Congress, World War Veterans Act, 1924, approved June 7, 1924, states the purpose of the Act as follows:

"Section 300. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and to the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States upon application to the Bureau and without medical examination, shall grant insurance * * * against the death or total permanent disability of any such persons * * *"

43 Stat., Sec. 300, page 624.

This purpose reaffirmed and restated in the Act of March 4, 1925.

43 Stat. 1308 (38 U. S. C. A., Sec. 511).

(c) "The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation."

43 Stat. 613 (38 U. S. C. A., Sec. 454).

(d) Director of Veterans Bureau is charged with the duty to see that compensation paid to the Guardian of an incompetent veteran is properly accounted for.

43 Stat. 608 (38 U. S. C. A. 426).

(e) "Director in his discretion may suspend payments to any Guardian or other person who shall neglect or refuse to render an account to the Director from time to time showing the application of such payments for the incompetent *beneficiary.*" (Our italics.)

43 Stat. 613 (38 U. S. C. A. 450).

(f) Guardian who shall embezzle money paid under War Risk Act or fraudulently convert same to his own use may be prosecuted and convicted in the Federal Courts. His punishment is fixed at fine not exceeding $2,000.00 or imprisonment at hard labor for a term not exceeding five years.

43 Stat. 1312 (38 U. S. C. A., Sec. 556).

Under provisions of the foregoing statutes of the United States, War Risk Insurance and Adjusted

Compensation paid by the United States to the Guardian of an incompetent is subject to the control of the United States until it reaches the beneficiary; in such cases the money belongs to the United States and the Guardian is the agency through which the money reaches the incompetent veteran and under the provision of Sec. 3466, Revised Stat. of U. S., said funds are entitled to a priority over the common creditors of the insolvent bank.

Diverse Opinions of State Courts in Construing These Statutes.

The Supreme Courts of the States of Nebraska, Missouri, Iowa, Minnesota and Virginia each hold that money paid by the United States Government to the Guardian of an incompetent or to his administrator as War Risk Insurance and Adjusted Compensation is the money of the United States until it reaches the beneficiary. As money of the United States it is entitled to priority of payment by virtue of the Statutes of the United States (Revised Stats. of the U. S., Sec. 3466). The Guardian is the channel created by the Congress of the United States through which this money is to reach the incompetent veteran. It cannot be diverted from that channel.

NEBRASKA:

State v. *1st State Bank Pawnee City,* 121 Neb. 521; *State v. Security Bank of Creighton,* 121 Neb. 515.

MISSOURI:

Butler v. *Cantley,* 47 S. W. (2d) 258.

MINNESOTA:

Anderson v. *Olivia State Bank,* 243 N. W. 398.

IOWA:

Pension money which has been paid to the Guardian of an incompetent is still in the process of transmission to him. The Guardian does not receive the money as agent for the incompetent, but as agent for the Government, and the money is still under the control of the Federal Government. *Manning* v. *Spry,* 121 Ia. 191. The Court said:

> "While in the Guardian's hands, he is a mere trustee or depository for the Federal Government, and the fund, no matter what its form, is not subject to taxation" (*Id.*).

VIRGINIA:

In *United States Veterans Bureau* v. *Thomas,* 156 Va. 902, the Court said that the Federal Government adopted the State courts as a means whereby the compensation of the veterans was administered, but that the Federal Government, having put up the money and intentionally retained control of it, was sufficiently interested, as required by statute, to appear and ask for the removal of incompetent veteran's committee.

KENTUCKY:

The opinion of the Court of Appeals of Kentucky in the instant case, 244 Ky. 68, is in direct conflict with the opinions of the Supreme Courts of the five States cited above. In the opinion, 244 Ky. 68, at 69, the Court says:

> "A careful examination of the statutes of the United States fails to reveal any express provision authorizing the preference given to this claim, and none has been pointed out * * * Furthermore, we find nothing in the Acts of Congress relating to adjusted compensation and War Risk Insurance from which to draw a reasonable inference that such preference is warranted or was intended. There are, however, a number of cases from Courts of other states that are in agreement with the Chancellor's finding." (Authorities cited.)
>
> "Some of these cases are cited in brief for appellee, and no doubt were relied on and had a determining effect in the Court below. But in none of them is it claimed that either the adjusted compensation or War Risk Insurance Acts expressly give preference or priority to funds held by fiduciaries for incompetent soldiers."

It will be observed that the opinion rests upon the fact that the World War Veterans Act fails to declare in *express terms* a preference or priority in favor of the incompetent for money on deposit to the credit of his Guardian in a bank at the time it becomes insolvent. The fact remains, however, that Federal

Statutes were enacted and have a material bearing on this question. Section 22, Act of Congress, June 7, 1924, 43 Stats. 613 (38 U. S. C. A., Sec. 454), *expressly* provides that the Compensation, Insurance and Maintenance and Support allowance shall not be subject to the claims of creditors of any person to whom the award is made. Certainly Congress never intended that money which is expressly exempted from the debts of the incompetent veteran should be applied to the payment of debts of other persons, which is the effect of the ruling of the Court of Appeals of Kentucky in holding that this money may be distributed pro rata among the creditors of the insolvent bank, thereby violating the spirit and the letter of the Congressional Act.

The War Risk Insurance was never provided for the benefit of creditors or that creditors should benefit by it. It was certainly not intended that creditors of a third party, in this case, the depositors in the Hargis Bank and Trust Company, should benefit from the fund.

SUMMARY.

The Act specifically provides:

(1) Federal control over such money while in the hands of the Guardian of an incompetent veteran, 43 Stat. 608 (38 U. S. C. A., Sec. 426). (2) The Federal Disability Compensation is not assignable, is not subject to claims of creditors and is not subject to taxation, 43 Stat. 613 (38 U. S. C. A., Sec. 454). (3) In